

Prosecuting Domestic Violence:
A Review of Current Policy, Research, and Practice Initiatives

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Abstract

This paper describes current innovations developed or used by prosecutors as applied specifically towards domestic violence. Both the increasing demand for a more effective criminal justice system response to domestic violence and the changing role of the prosecutor have fostered the development and implementation of many innovative strategies for dealing with the unique issues and problems related to domestic violence. After discussing the history of domestic violence prosecution and its influence on the changing role of the prosecutor, the paper reviews four general types of initiatives currently employed by prosecutors specific to domestic violence cases. Each is described in terms of its prevalence, advantages, limitations, and relative success. General limitations and constraints inherent to domestic violence, prosecution, and policy evaluation are also discussed. Finally, policy recommendations relative to current research and practice are presented. Given the lack of conclusive research and the variability among jurisdictions, prosecutors must often rely on their own evaluations in measuring the effectiveness of their programs. While most innovations are tested largely only through direct implementation, continued research is certainly warranted, and should be undertaken in conjunction with the most promising practices.

Outline

- I. Introduction
- II. Domestic Violence and the Changing Role of the Prosecutor
- III. Innovations and Initiatives
 - a. Community Prosecution
 - b. Specialization, Vertical Prosecution, and Domestic Violence Courts
 - c. No-Drop Prosecution
 - d. Restraining Orders
- IV. Limitations and Constraints
 - a. Political Office and Influence
 - b. Balancing Victim's Interest with Serving Justice
 - c. Lack of Consistent and Conclusive Research
- V. Policy Recommendations
- VI. Conclusion

I. Introduction

The role of the prosecutor and the criminal justice system in dealing with domestic violence in the United States has changed dramatically over the past 20 years. In 1984, strongly influenced by the recently released results of the Minneapolis Domestic Violence Experiment, the U.S. Attorney General's Task Force on Family Violence specifically recommended that domestic violence be recognized and responded to as a criminal activity (Gelles, 1996; Sherman & Berk, 1984). Seemingly overnight, police departments throughout the country quickly adapted pro and mandatory arrest policies for domestic violence offenders. Within one year of the release of the study, the number of police departments encouraging or requiring arrest for misdemeanor domestic violence tripled, from 10 percent to 31 percent of all departments nationwide. By 1986 this figure had increased to 46 percent (Buzawa & Buzawa, 1996b; Sherman & Cohn, 1989). The growth in the number of arrests and the continually increasing demand on the criminal justice system to address the issue of domestic violence ultimately created a substantial emphasis on the criminal prosecution of domestic violence cases (Finn & Colson, 1990). Previously scrutinized for a general inability to reduce domestic violence and a tendency to minimize the effects of police initiatives by failing to prosecute a majority of cases, prosecutors were challenged to develop new strategies to fully and effectively deal with domestic violence. These events laid the foundation for many of the policies used by prosecutors for dealing with domestic violence that exist today.

Twenty years after domestic violence first became a primary concern of the criminal justice system, prosecutors continue to seek new ways of dealing with the continually present problem. Even without an accurate measure of its true prevalence, it is clear that domestic violence represents a very broad and complex issue, which demands both the development of new initiatives as well as the creative use of existing policies.

Despite the general lack of conclusive research supporting any particular development or initiative, many local prosecutors have rejected the “nothing works” mentality and sought to develop and implement their own innovative strategies. To this end, a steady flow of literature outlining domestic violence prosecution innovations has emerged. The National Institute of Justice and other agencies, both public and private, continue to support the documentation and evaluation of prosecutorial initiatives throughout the country. Given the lack of and limitations in conducting qualitative research, this collection of “best practices,” and the prosecutor’s own experiences, represent the best sources of information available for helping prosecutors face the many challenges that domestic violence presents.

This paper examines and reviews four recent initiatives utilized by prosecutors to address the increased demand for a more effective prosecutorial response to domestic violence. They are not case-specific techniques, but are better described as strategies for dealing with domestic violence as a larger complex issue. The categorization of these initiatives under four general headings is an attempt to group like practices although in some instances many of them are either combined or even employed *a la carte*, as resources and interests allow. Although this list is far from being all inclusive, it captures four major innovations currently used by prosecutors’ offices, as documented in print as well as described by prosecutors themselves.

The paper is organized into five sections. The Introduction is followed by a historical review of the interaction between prosecutors and domestic violence. The changing view of domestic violence as an issue demanding increased social control through legal sanction has a significant influence on the role prosecutors play in dealing with domestic violence. This sets the stage for understanding the origins of the four major

initiatives. The first initiative, Community Prosecution is a group of concepts for focussing and structuring prosecutorial resources towards working within and meeting the needs of local communities. It represents a broad range of initiatives and is based on the community-oriented policing model. Community-Oriented Prosecution represents a framework from which other initiatives can be implemented. The second general category of initiatives, Specialization, Vertical Prosecution, and Domestic Violence Courts, represents three innovations recently devised to allow prosecutors to develop specialized knowledge of domestic violence issues and to focus those and other resources specifically on the problem. The third group of initiatives includes No-Drop Prosecution Policies. This section evaluates the implications and effects of mandatory prosecution and discusses the lessons learned from research on mandatory arrest policies. The fourth initiative, Restraining Orders, represents one of the most widely implemented legal remedies used in spousal abuse cases. Despite the popularity of protection orders, the available empirical research questions their effectiveness. General limitations and constraints effecting domestic violence prosecution and the relationship between research and practice in developing new initiatives are also discussed. Finally, the paper concludes with a review of policy recommendations and the goals that these policies should seek.

II. Domestic Violence and the Changing Role of the Prosecutor

The Domestic Violence in America:

Today domestic violence undoubtedly represents a substantial and complex challenge to prosecutors. The first step in developing any initiative is to fully recognize the magnitude of the problem, but an attempt to measure the prevalence of domestic violence in this country is at best, difficult. It is unlikely that even the most reliable statistics currently available accurately depict the amount of domestic violence that occurs each

year in the US. Currently, there are no national surveys of reported spouse abuse and most of the data that is collected on violence towards women [between intimate partners] comes from self report surveys (Gelles, 1998). A 1995 joint research report of the National Institute of Justice and the American Medical Association conservatively estimates nearly 4 million incidents of abuse against women by family members annually. Even more alarming, roughly half of all domestic violence incidents are never reported (Center on Crime, Communities & Culture, 1999; Witwer & Crawford, 1995). For cases resulting in homicide, the type of domestic violence most likely to be reported, data from the FBI's *Supplementary Homicide Report* shows that roughly 50% of women over age 18 who were killed between 1980 and 1991 were killed by a [legal or common law] husband, former husband, or boyfriend (Buzawa & Buzawa, 1996a).

The way that the American criminal justice system views the issue of domestic violence is much different now that it was in the past. Even within the last decade, the issue of family violence has been transformed from one "obscured by selective inattention" to a problem that has increasingly become the focus of both public and professional policy (Gelles, 1998). It is only within the past twenty years that domestic violence has become an issue considered fully deserving of legal intervention. This change in attitude has dramatically influenced the response of the criminal justice system and has had a substantial effect on reshaping the role of the prosecutor. In fact, the prosecutorial initiatives discussed in this paper are largely the result of recent changes in legislation, increased budget allocations, and public demand and awareness. These influences are products of the changes that began more than twenty years ago when domestic violence first became an issue of increased social importance demanding a more dedicated and focused social response.

Beginning in the 1970's, social policy toward victims of domestic violence focused on developing and improving legal responses to protect women and punish offenders¹ (Fagan, 1996). Although laws against spousal abuse have existed for centuries, for the first time legal sanction represented a wide-spread and appropriate form of social control against domestic violence. In *The Criminalization of Domestic Violence*, Jeffrey Fagan (1996) explains the underlying theory that influenced the formal use of legal sanctions against domestic violence in the 1970's:

The primary focus [of social policy against domestic violence] has been the mobilization of societal institutions to increase the range of formal and informal controls at their disposal. During this time, social control through law dominated theories on how best to reduce domestic violence, focusing on the effects of increasing the risks and punishment costs of violence towards intimate partners. Rooted in assumptions of specific deterrence, social control in this context emphasized the application of legal sanctions through arrest and prosecution of assailants or the threat of legal sanctions through civil legal remedies that carried criminal penalties if violated.

The significance of the demand for social control of domestic violence through formal legal sanction is that effective legal sanction beyond arrest is only possible through the efforts of prosecutors. Various studies, including the noted Minneapolis Domestic Violence Experiment, inconclusively debate the general deterrent effects of arresting batterers. Regardless of the potential deterrent effects of arrest, deterrence ultimately results from prosecutorial and judicial actions capable of assigning substantive punishment (Fagan, 1996). This premise empowers prosecutors to have an effect on domestic violence and provides a motivation in developing new ideas for facing the challenges domestic violence presents.

The Changing Role of the Prosecutor:

Just as the criminalization of domestic violence has had a significant effect on the actions of police, it has also greatly influenced the prosecutors' role in dealing with victims

¹ Although men are also victims of domestic violence and spousal assault, the majority of domestic violence victims are women.

and offenders. Historically, prosecutors have been accused of maintaining a legacy of disinterest in domestic violence cases. Prosecutors had little incentive to vigorously follow through in domestic violence cases and were largely criticized for failing “to actively pursue cases” for a variety of reasons, including the anticipated lack of victim cooperation (Fagan, 1996). Because prosecutors’ offices are often evaluated based on the ability to produce convictions, as opposed to their ability to deter a particular type of crime, many prosecutors saw no reason to pursue domestic violence cases without victim participation. With only weak evidence and often without witnesses, such cases are hard to win and are often viewed as inefficient expenditures of resources. This logic led to the dismissal of domestic violence cases at the prosecution stage at persistently higher rates than other types of violent crime (Fagan, 1996). Fortunately, this is changing. Increased public demand has renewed and reinforced the role of the prosecutor as a key component of the criminal justice system’s response to domestic violence. Responding to the demand for increased law enforcement involvement in domestic violence intervention and prevention, many of the individual elements of the system have sought to develop and implement effective policy initiatives.

Although police may have the greatest and most direct contact with offenders and victims, prosecution becomes the most powerful component of the criminal justice process because of the number of offenders and victims it affects (McCoy, 1998). Incidents of domestic violence often represent a pattern of abuse and vary rarely involve only a single event. A woman who is a victim of abuse by another member of the same household is, on average, abused three times a year (Gelles, 1998). Clearly the ability of police to protect victims of abuse from further violence is limited. Prosecutors, on the other hand, are able to apply their influence in directing an entire range of resources towards domestic violence as a larger issue and not just a series of individual cases. As the criminal justice

system responds to the social demand for greater action in addressing domestic violence, prosecutors have the ability to play a key role in deterring and preventing domestic violence. This new role requires prosecutors to view themselves as problem solvers and not simply case managers.

III. Policy Innovations and Initiatives

Despite the limited amount of formal research specific to domestic violence prosecution, a fair amount of information is available documenting current initiatives and assessing their preliminary success. Although most of these ideas are not new to prosecution, the current emphasis on preventing domestic violence, changes in attitudes towards domestic violence, and new legislation may provide opportune conditions for their reevaluation. Assessment of these initiatives considers four general questions: 1) what strategies and initiatives are prosecutors using to deal with domestic violence; 2) what ends do these initiatives seek; 3) what makes them appealing; and 4) what evidence, if any, indicates their effectiveness. Although unable to describe or account for every initiative currently in use, this work describes the general tenants of four prevalent and promising initiatives.

Community Prosecution:

Community prosecution is an organizational initiative modeled largely on the precedent set by the proliferation of community policing throughout the early 1990s. This concept of involving the community in determining which types of problems to target and perhaps how to best approach them, has gained popularity among prosecutors. Based on the premise that organized communities who have an active role in influencing law enforcement efforts possess a constructive and powerful force for improving public safety,

the goal of community oriented prosecution is to bring legal expertise closer to community residents (National Institute of Justice, 1996). Theoretically, community prosecution is a criminal justice system response to “grassroots public safety demands of neighborhoods...by the people who live in them.” (Boland, 1996).

At the base level, community inputs generally concern quality-of-life and disorder offenses, but in high-crime concentration areas in urban neighborhoods, more serious crimes, including domestic violence, often become the focus of community attention (Boland, 1996). Community-oriented strategies allow prosecutors to strengthen public relations and to educate the public about the prosecutor's involvement and interest in domestic violence. Doing so makes the criminal justice system more user friendly and open to individual victims as well as the community as a whole. Prosecutors who are familiar with the communities and individuals they serve are better able to understand and tailor the impact of the criminal justice system response on both the offender and the victim (Gramckow, 1997). Although domestic violence is less often a community concern because it may effect only a small portion of the population, community prosecution provides a new organizational structure from which other domestic violence initiatives can be developed.

The most attractive benefit of community prosecution is that it represents a new interface between the prosecutor and the public. By creating a reciprocal relationship between prosecutors and the community, it represents a departure from the traditional case processing mentality. It encourages prosecutors to approach domestic violence as an issue, one that effects not only individuals, but the entire community, and not just as individual cases.

When community prosecution strategies first appeared, they represented a "radical departure from conventional notions of dealing with crime," and often developed outside of the "existing organizational structure" of prosecutors' offices (Boland, 1996). Now prosecutors' offices are realigning their organizational structure to accommodate the community prosecution mentality, increase public accessibility, and focus on specific problems and crime types effecting their communities. This represents a marked change from the historical image of a prosecutor who works in an office during "normal" business hours and has very little interaction with the general public compared to police and other criminal justice agencies. Changes in office organization have also influenced other innovations such as domestic violence specialization, vertical prosecution, and the establishment of specialized courts, in an effort to meet public demand.

The potential for community prosecution to be useful specifically in dealing with domestic violence is supported by the success of community prosecution in general. Portland, Oregon was one of the first cities to launch a pilot program in 1990. Soon after, many jurisdictions, including Washington, D.C.'s Fifth District, New York City, Los Angeles, and Kansas City have implemented and evaluated community-oriented prosecution programs. The initial success of D.C.'s Fifth District Program was documented by the willingness of residents to cooperate with police and prosecutors, something rare for this high-crime urban area. Success is also measured in terms of rising conviction rates and decreasing arrest rates which in turn lead to decreasing prosecutorial caseloads (Celender, 1999). However, such evidence is far from conclusive. Increasing arrest rates may not signify any significant change but only reflect increased police intervention as arrest rates for domestic violence have traditionally been low. Prior to the recent implementation of mandatory arrest policies, arrests were typically made in only 3 to 14 percent of all domestic violence incidents reported to the police (Buzawa & Buzawa,

1996a). Even so, community prosecution shows some signs of promise. A U.S. Attorney in D.C.'s Fifth District tells of an incident where local residents provided assistance and information to prosecutors in an area notorious for distrust of police and prosecutors (Celender, 1999). This new found trust and interest in helping prosecutors came after a simple community-oriented action by the U.S. Attorney's Office to help residents clean up their neighborhood. Although long-term success in applications specific to domestic violence have yet to be determined, most community oriented prosecution initiatives have received strong local support, and if anything, provide lessons learned to other communities interested in establishing similar programs.

Community prosecution does have some significant limitations and shortcomings. The primary limitations are need and availability of resources. Despite its rapid and continued proliferation, the number of offices that are currently practicing community-oriented policies is small given the fact that there are over 2,850 prosecutors throughout the country. Most offices are too small to allow for the development of well defined and highly publicized efforts that depart from traditional operations (Gramckow, 1997). Other limitations center on the procedural and conceptual aspects of prosecution. The concept underlying community prosecution is to allow local communities to develop a more coordinated and comprehensive approach to crime control and prevention (Robinson, 1996). Prosecution, however, is often a very complex and specialized task. District attorneys struggle to balance serving the needs of the community and victims, with serving justice. A Fifth District [D.C.] U.S. Attorney explains, "we don't always have the answers people want to hear," but they do provide a mechanism for identifying problems and presenting questions (Trugman, 1998). The role of the effective community prosecutor is to provide answers and explanations, often concerning legal constraints that prohibit police and prosecutors from doing what citizens think ought to be done (Boland, 1996).

Another general consideration of community prosecution is the ability to define and measure true effectiveness. The most attractive quality of "community" programs is the feeling of involvement among community members. Citizens feel that they have a say in what prosecutors are doing to improve their communities and reduce crime, and elected officials feel that they are providing the community with what they want. This is all very appealing, but its true effectiveness in reducing specific crime types, like domestic violence, is hard to measure, if it has any effect at all. To date only a few internal or single jurisdiction evaluations exist (Gramckow, 1996). Because there is little substantive data linking crime reduction to community prosecution, most indicators of success are anecdotal. For this reason, adversaries, particularly political opponents, are often quick to dismiss the intentions of prosecutors who advocate community prosecution as pure publicity stunts.

Community-oriented strategies involve devising alternative responses and moving away from conventional notions of what prosecutors do. In doing so, there is a danger of "net widening," meaning that prosecutors will extend themselves beyond their effective sphere of influence. Given the complexity of domestic violence, however, greater involvement on the part of most if not all criminal justice components seems inevitable. Some suggest that many currently implemented community-oriented policing tactics may have problematic effects on domestic violence. Shifting the emphasis of police efforts towards problem solving and away from arrest, and towards public-order crimes at the expense of crimes of private disorder may have an impact on abuse victims (Buzawa & Buzawa, 1996b). Likewise, community-oriented prosecution seeks to adapt innovations to better satisfy public safety demands. Domestic violence is undoubtedly a serious problem, but because of its private nature, the extent to which a community might recognize it as such is questionable. But even without specific community demand for

intervention, domestic violence persists. A community prosecution approach to domestic violence would be one that involves many different roles. In fulfilling these roles, the prosecutor is not only encouraged, but would be forced to devise new and inventive solutions to persistent problems.

Community prosecution is an approach, not a program, and it requires highly flexible organizations with the ability to develop and adapt to new ideas. In its most promising form, community prosecution offers a new mindset for dealing with domestic violence because the prosecutor takes on new roles, including facilitator, counselor, negotiator, problem solver, and advocate, not just a case processor (Boland, 96). Community-oriented prosecutors are able to work with police and residents to build stronger cases, making them less likely to be dismissed, and therefore have a greater deterrent effect. They may also devise alternative remedies or find creative ways to enforce existing ordinances against chronic offenders. Relative to the other initiatives, community-oriented prosecution is perhaps the least specific to domestic violence. However, community prosecution provides an attractive organizational structure for implementing other innovations such as those discussed below.

Specialization, Vertical Prosecution, and DV Courts:

Case specialization and vertical prosecution are two related initiatives often integrated within a community based organizational strategy. Case specialization in general is not a new initiative. Prosecutors' offices regularly dedicate entire sections for dealing with specific crimes, such as robbery, auto theft, sex, and drug offenses. Vertical prosecution is a method of providing case continuity by assigning one prosecutor to handle an individual case from start to finish. With the exception of sickness or absence, a single prosecutor will handle a case from initial screening through final disposition. Cases

are often assigned to an attorney who is familiar with that specific neighborhood (geographic specialization) or that particular type of case (case specialization). Consistent with the community-oriented organizational structure, some offices assign a team of case specialists to a geographic region who will then handle those specific domestic violence, drug, or violent crime cases for that region or district. The alternative, horizontal prosecution, relies on teams or individual prosecutors to handle each phase of a case.

Although horizontal prosecution provides efficiency in case processing, vertical prosecution is preferred for domestic violence cases because it allows for the establishment of trust between the victim and a single prosecutor. In addition to helping develop more knowledgeable and capable prosecutors, vertical prosecution is especially valuable in domestic violence cases since it prevents victims from having to continually explain and depict often private and sensitive information to a new attorney during each phase of prosecution. The added benefit of vertical prosecution is that it allows prosecutors to develop expertise in specific types of cases (Forst, 1999; Office for Victims of Crime, 1998). It also allows prosecutors to become familiar with the many available victim resources. The use of vertical prosecution allows prosecutors to gain a more thorough understanding of the facts and circumstances pertaining to a particular case, and to develop and follow a more tailored strategy throughout the entire process (Kuriansky, 1998). For example, a study of 300 cases in Los Angeles showed that 150 cases handled by the Family Violence Division were three times more likely to proceed to trial and twice as likely to be awarded prison sentences than 150 cases handled by general prosecutors (American Prosecutors Research Institute, 1997).

Although specialized courts are not specifically a prosecutorial innovation, they represent a form of specialized prosecution and are therefore mentioned here. Evaluation

of domestic violence courts in New York and Toronto indicates that specialized courts and strong judicial leadership are significant factors in effectively preventing repeat incidents of domestic violence (Sack, 1998; Dinovitzer & Dawson, 1998; McLean & Worden, 1998). There are also many very successful specialized domestic courts currently operating throughout the country that serve as models for the development of additional courts (Sack, 1998). The Domestic Violence Part of the Supreme Court of the State of New York, Kings County, opened in 1996 and within six months had reached dispositions in more than 80 cases. The Brooklyn Domestic Violence Court opened in 1997 and disposed 297 cases, with 119 indicted cases pending, within the first year. In 1998, the number of disposed cases rose to 416 with 164 pending at the end of the year. The Brooklyn District Attorney's Domestic Violence Bureau processes roughly 11,000 cases annually. To handle the increasing caseload, a second court was opened in April 1998. The two dedicated courts allow each domestic violence judge to carry a more manageable caseload and dedicate greater attention to each case (Sack, 1998). With dedicated judicial leadership and specific knowledge of each case, domestic violence courts have greater potential to provide consistent and certain punishment to offenders. Domestic violence courts are also promising for their ability to bring prosecutorial, community, advocacy, and treatment resources together with victims in one place.

The immense resource demands of specialization, vertical prosecution, and establishing specialized courts certainly limit their implementation. While most small jurisdictions lack a sufficient volume of cases to justify the need for specialized units, many larger urban areas lack the resources to handle the large number of domestic violence cases. Specialized units are often established in response to high profile incidents and may dissolve or lose support as other issues arise and compete for limited resources. However, the single greatest drawback to prosecutors who specialize exclusively in full-

time domestic violence work is the high potential for "burnout." The sensitive issues, enormous case volume, and nature of domestic violence makes prosecution both frustrating and exhausting (Finn & Colson, 1990; American Prosecutors Research Institute, 1997). Obviously, continually rotating new attorneys in and out of domestic violence prosecution units defeats the purpose of specialization and vertical prosecution. Perhaps an optimal time limit for this type of work could be established.

No Drop Prosecution and Mandatory Arrest Policies:

It is evident that low rates of prosecution often serve to undermine the efforts of police and the consistent dismissal of domestic violence cases effectively nullifies the deterrent effect of legal sanctions (Fagan, 1996). To overcome this problem, many prosecutors' offices have implemented in-house no-drop prosecution policies. A survey of prosecutors' offices in jurisdictions with populations of more than 250,000 found that over 66 percent employ a form of no-drop prosecution policy in domestic violence cases, with 83 percent reporting no difference in policy regardless of whether the police or the victim initiated the complaint (Buzawa & Buzawa, 1996a; Rebovich, 1996). Although policies vary from office to office, in general terms, no-drop policies require that all domestic violence cases with legal sufficiency for trial, go forward, regardless of the victim's intent or willingness to cooperate. However, over 90 percent of offices with no-drop policies reported "some flexibility" in their implementation (Rebovich, 1996).

The obvious limitation to adopting no-drop policies is the prosecutorial hesitation to proceed to trial even in cases where the chances for conviction are low. Given that, the willingness of prosecutors to implement such policies signifies an interest in dealing with domestic violence and not just winning cases. Results of the Indianapolis Domestic Violence Prosecution Experiment indicate that the type of prosecution is less crucial than

the fact that prosecution is initiated at all in deterring future violence (Ford & Regoli, 1993). Unfortunately, prosecutors themselves might resist no-drop policies for two reasons. First, no-drop policies, like determinate sentencing, limit the generally unconstrained discretion prosecutors are accustomed to. Second, no-drop prosecution also constrains resources by mandating that all cases warranting prosecution go forward to trial. Implementing such a policy, in most large jurisdictions, demands a dedicated domestic violence unit.

Victim advocates argue that such policies remove the victim's power to dismiss charges which could place victims in danger of further violence (Office for Victims of Crime, 1998). Victim advocacy groups also argue that no-drop policies unfairly affect victims by not letting them make key decisions affecting their lives, and actually increase the victims risk of future violence. In support of this claim, the Indianapolis Domestic Violence Prosecution Experiment found that victims of domestic violence who initiated charges against a spouse, but were then given the option to drop charges, lowered their risk of further violence (Ford & Regoli, 1993). Flexible no-drop prosecution policies appear to best resolve this conflict. One notable example of the successful use of a flexible no-drop policy in a rural jurisdiction is one used in both Franklin and Grand Isle Counties, Vermont. Nine months after implementation of a flexible no-drop prosecution policy for domestic violence cases, the Domestic Violence Task Force was able to convict and place under some type of supervision 80 percent of defendants charged with domestic violence and sexual-assault related offenses (Kuriansky, 1998). Although these results are promising, they did not document any specific reduction in further violence.

In many ways, no-drop policies are the prosecutorial equivalent of mandatory arrest policies used by police. As mentioned earlier, mandatory arrest policies have a substantial effect on prosecutorial functions. Ultimately, the Minneapolis Experiment and

subsequent follow-up studies have collectively shown that mandatory arrest as a deterrent to future violence works better for some offenders than others, and is perhaps more effective in the short term than in the long run (Schmidt & Sherman, 1996; Sherman, Schmidt & Rogan, 1992). Despite the inconsistent evidence of specific deterrence, mandatory arrest policies continue to be implemented with such varied results that their overall effect is undefined. One possible lesson learned from mandatory arrest to be applied to no-drop prosecution is that implementation demands follow-up, modification, and continued evaluation. Findings from the Indianapolis Domestic Violence Prosecution experiment provide no evidence to suggest that rehabilitative outcomes (counseling or treatment) are any more effective than adjudicated outcomes (including punitive sanctions) in preventing repeat violence (Ford, et al. 1996; Ford & Regoli, 1993). This implies that prosecutors motivated, if not mandated, by no-drop policies to fully prosecute domestic violence cases are likely to provide reductions in violence at least comparable to the alternatives. The central limitation to no-drop policies is that some prosecutors adhere to strict no-drop policies even when doing so may put the victim at risk (Ford, et al., 1996; Ford & Regoli, 1993). Overall, flexible no-drop policies are seemingly more promising for providing deterrence than mandatory arrest, but parallel to the mandatory arrest debate, prosecutors must weigh the potential risks that a given policy imposes.

Civil Restraining Orders:

Formal restraining orders represent one of the most widely implemented domestic violence initiatives in recent years. Although restraining orders can only be issued by courts and are not conventionally associated with prosecution, the recent expansion of the prosecutor's role in domestic violence cases makes them an added prosecutorial resource. An obvious attraction of a restraining order to a prosecutor is that it can transform a criminal matter to a civil one. This is advantageous not only for the prosecutor

in the interest of time and available resources, but may also be preferable to criminal prosecution from the victim's perspective as well (Harrell, Smith, & Newmark, 1993). Whether used in lieu of or in conjunction with criminal prosecution, civil restraining orders provide the prosecutor with a potentially effective tool for limiting contact between the offender and victim. They can also help the prosecutor build a stronger case against the abuser.

A recent initiative by prosecutors has been to use restraining orders in two general ways. First, prosecutors can help victims of domestic violence request a restraining order while their case is being prepared for trial. This is some times used as an intermediate step, or as a form of diversion, depending on the prosecutors policies. Secondly, prosecutors can recommend restraining orders as a remedy for victims of domestic violence when abuse has occurred but insufficient evidence exists to take the case to trial. Often in these cases, ambitious prosecutors help the victim request a restraining order and then use the conditions of the order, if violated, to pursue further prosecution.

The use of restraining orders is not a new initiative. However, when first introduced, the effectiveness of restraining orders was limited by weak enforcement, insufficient violation penalties, and a general lack of availability (Fagan, 1996). In the past, limitations on obtaining restraining orders included high filing fees, narrow eligibility, and no means of issuing emergency orders after court hours. Another significant limitation of civil protection orders was widespread lack of enforcement (Finn & Colson, 1990). Changing legislation and improved administrative procedures have overcome many of the barriers that formerly limited their effectiveness, resulting in a recently increased prevalence of their use. New legislation now also extends the availability of restraining orders to unmarried cohabiting couples, and to women divorced or separated from their

husbands. Much of this was implemented through simple changes in outdated or previously under-enforced laws. As early as 1980, 47 states had passed legislation mandating changes in protection orders (Fagan, 1996). Changes in legislation and administrative procedures have reduced, if not eliminated, many of the barriers in obtaining and enforcing protective orders. With these limitations removed, the issue of the usefulness of restraining orders now centers on their effectiveness in deterring violence and protecting victims.

Despite the great promise and potential that civil restraining orders hold, very little is known about their documented impact and the factors that most significantly influence their success in providing relief (Harrell, Smith, & Newmark, 1993). Although the use of restraining orders is popular, there are few studies that document or even examine their effectiveness in deterring future violence. The few studies that do exist are criticized for being non-experimental or quasi-experimental in design, yielding appropriately weak conclusions (Fagan, 1996). While practitioners continue to support restraining orders for their ability to provide timely relief, many researchers focus on their inability to adequately protect victims from further abuse. Klein (1996) provides the following assessment:

Civil restraining orders do not adequately protect women from further abuse and a primary reliance on such orders must be seriously questioned. Any effectiveness that they have in preventing reabuse comes from their issuance rather than their maintenance.

While restraining orders are widely used, available research shows little success in deterring future violence. For every study that shows promising results, one or more show no effect or even an increased risk to victims (Fagan, 1996). An Urban Institute study found that nearly 60 percent of the 300 women interviewed one year after receiving a protective order suffered abuse at least once (Harrell, Smith & Newmark, 1993). A different study showed that almost half of the women were reabused within 2 years of the restraining order. The reabuse rate did not differ between those who maintained the order

and those who dropped them (Klein, 1996). The fact that abuse continues, evident in future arrests and calls for service, should indicate that civil protection orders are not an effective alternative to criminal prosecution. The full implications of these findings are unclear, leaving the effectiveness of restraining orders in deterring future violence questionable. The general consensus seems to indicate that restraining orders are best used not as an alternative to prosecution, but rather, in conjunction with vigorous and mandatory prosecution.

IV. Limitations and Constraints

With any new strategy or innovation, there are limitations and constraints on implementation and outcomes. Added to the limitations and barriers specific to each innovation discussed above, certain inherent characteristics of the prosecutors' office further complicate adaptation of new initiatives in general as well as those specific to domestic violence. Many prosecutors admit the biggest limitation to effectively implementing new prosecutorial strategies is simply resistance to change. The unique nature of the prosecutors office and its role in dealing with domestic violence also creates its own set of inherent limitations. Three of those key limitations include: 1) the position of the prosecutor as an elected official, 2) the need to balance justice with serving the needs of victims, and 3) an overall lack of consistent research and guidance.

Prosecutors in the United States are almost always either elected public officials or appointed by local elected officials, as a result, they are undeniably involved in local politics. Unfortunately, some ambitious district attorneys will follow a particular political party stance because the job of local prosecutor is generally regarded, and often serves, as an intermediate step to higher office (McCoy, 1998). Combining this with the "virtual

absence of a system of measured accountability," a successful prosecutor is one who maintains a public perception of effectiveness in fighting crime by convicting offenders (Forst, 1999). Consequently, effectiveness in deterring crime, including domestic violence, often becomes a secondary concern. There is however, a good side to this as well. An elected official, looking to gain reelection, or to move on to higher office, is willing to strongly support new initiatives and maintain a high interest in their promotion and success, regardless of the motivation.

Another limitation on any prosecutorial initiative or policy is the balance between serving the public interest and protecting the victims' rights and interests. Prosecutors are expected to demonstrate concern for the victim while also serving the public interest. Ultimately, the prosecutor's true client is the state and not individual victims of crime (McCoy, 1998). Ford's [Indianapolis Domestic Violence Prosecution Experiment] finding that allowing victims to drop charges reduces the victim's risk of future violence stands in conflict with the notion that all offenders should be prosecuted to the fullest extent of the law. Although this is not a concept unique to domestic violence, it highlights the need for prosecutors to balance between protecting victims and serving justice. Victims' advocates argue that prosecutorial policies must not only serve to protect victims but they should also support and empower them. There is evidence consistent with the findings of the Indianapolis Domestic Violence Prosecution Experiment that empowering victims can help them avoid further victimization (American Society of Criminology, 1996; Ford & Regoli, 1993). The Office for Victims of Crime claims the most important and basic right of victims is to participate during prosecution and that victims' satisfaction with prosecutors increases dramatically if they are invited into the decision making process (1998). A study, sponsored in-part by the American Prosecutors Research Institute and the National Victim Center, found 67 percent of victims were satisfied with prosecution when they were

allowed to be involved, while only 18 percent were satisfied when not given an opportunity to do so (Office for Victims of Crime, 1998). This highlights an important point: Victims' desires and interests are important considerations and the unwillingness of a victim to cooperate should not be viewed solely as a limitation.

Finally, it is clear that prosecutorial initiatives are influenced more by victim advocacy, public demands, and prosecutors themselves than they are by evaluative research. As described by Fagan, "the narrow range of studies on the deterrent effects of legal sanctions for domestic violence," does not compare with the "extensive efforts of activists, victim advocates, and criminal justice practitioners" to influence policy or shape strategies for reducing domestic violence (Fagan, 96). To date there has been only one experiment focusing on domestic violence prosecution (Fagan, 1996; Ford & Regoli, 1993). The lack of quantitative analysis of prosecutorial strategies is tied, in part, to the noted lack of systematic measures of performance for measuring any particular prosecutorial technique, strategy, or initiative. The dynamics of domestic violence as both a legal and social issue are inherently problematic from a research perspective, translating into research that is cursory at best (American Prosecutors Research Institute, 1997). There are also many circumstances where random assignment is not practical or even ethically justifiable (Fagan, 1996). In many cases, scientific or even meaningful evaluation of the effects of prosecutorial initiatives is just not possible.

The key limitation in studying specific prosecutorial innovations is that no two jurisdictions or prosecutors' offices are the same. What works for one may or may not work for another, and if it is effective, it may be so only within a limited range or with certain modifications. Borrowing a lesson learned from the Minneapolis Domestic Violence experiment, the success of an attractive initiative in one location does not

validate its use in any other jurisdiction. Most prosecutors will tell you they do “what works,” by putting criminals behind bars. The best prosecutors, however, recognize when their tactics are not working and search for another innovation or tool that is more effective. As with all policies, there are limitations and success, or even progress, will come only from acknowledging and then overcoming those limitations.

V. Policy Implications and Recommendations

It may not be possible to make conclusive generalizations about what types of prosecutorial policies work and those that do not. What works or at least appears effective in one office may not work or be less effective in another. There are two general assumptions supporting this claim. First, many, if not most, of the initiatives have not been widely implemented or adequately evaluated in enough locations to make general conclusions. Secondly, any evidence of success is likely to be specific to that program or jurisdiction alone.

Borrowing from the lessons learned about mandatory arrest policies in the Minneapolis Domestic Violence Experiment and replication studies (Sherman & Berk, 1984; Sherman, Schmidt, & Rogan, 1992), and given the level of serious risk to victims, any policy action taken should not be taken without full evaluation of the available evidence. Unfortunately, the evidence currently available is less than conclusive. Just as arrest is not universally effective, the effectiveness of any promising prosecution policy is unlikely to be consistent in any other jurisdiction (Ford, et al., 1996). But that does not mean that policy makers should continue to wait for more consistent or conclusive evidence. Policy must incorporate and support further research and evaluation, but it can not afford to wait for it. Continuation of “fad-driven” and “nonsystematic” policies without

evaluation is likely to lead to the same conclusion five years from now that exists today; “we just don’t know, the evaluation data is not very good.” (Fagan, 1996). Likewise, Brian Ford suggests that “we will see little in the future that has not already been implemented somewhere,” either now or at some time in the past (Ford, et al., 1996).

Effective policy must capitalize on the continued implementation and evaluation of new initiatives as well as the re-evaluation and improvement of initiatives previously limited by technology, legislation, and other barriers. For example, the current assessment of restraining orders suggests that their effectiveness is limited not by availability as much as enforcement. To make protective orders more effective, prosecutors should work with police to develop reliable and timely methods of verifying orders. The development of automated data systems accessible to both police and prosecutors offers a viable solution for overcoming both limitations. Technological innovations represent viable solutions for overcoming many other system limitations. Integrated data systems provide opportunities to link case and offender information within and between criminal justice agencies that were almost unimaginable in the past (Forst, 1999). Forst also suggests that because this technology exists, the primary barriers to using these systems, beyond costs, are human and not technological (1999). An effective policy might use technology to provide prosecutors and police officers with updated information on both the victim and offender, while ensuring adequate protection of privacy and due process.

Adopting the recommendations of the National Institute of Justice and the American Medical Association (Witwer & Crawford, 1995), and based on the best evidence available from current practice and research literature from the legal, medical, and victim-advocate communities, an effective policy should seek to accomplish the

following (Kuriansky, 1998; American Society of Criminology, 1996; Ford, et al., 1996; Witwer & Crawford, 1995; Ford & Regoli, 1993):

- ▶ **Protect and support victims:** Prosecutorial actions and policies function to enforce laws, support order, and serve justice to provide for the safety and general well-being of residents. The criminal justice system must recognize the serious problems that even “minor” incidents of domestic violence represent. Victim safety and welfare, as well as the safety of dependent children and other family members, should be a paramount goal of any justice system intervention or policy.
- ▶ **Hold offenders accountable for past and future behavior:** Prosecutors must act to ensure that legal and informal controls deter future offending. The message must be clear: no form of violence, against women or anyone else, is acceptable behavior.
- ▶ **Empower victims to protect themselves:** This aspect involves considering the victim’s assessment of personal safety and the likely impact of criminal sanction on both the victim and the offender. Although prosecutors must often act independent of victims’ intentions, “user-friendly” policies might address victims’ concerns, provide information about available options and resources, help assist victims in the decision-making process towards avoiding future victimization. A critical finding of the Indianapolis Prosecution Experiment was that victims who were permitted to decide whether or not the case was dropped but elected to pursue charges were significantly less likely to be battered again during the six-month follow-up period.
- ▶ **Encourage abusers to change their behaviors:** Invoking formal and informal forms of social control helps to advocate changes in attitudes and lifestyles. Early and meaningful intervention, combined with meaningful penalties and sanctions can save lives and deter future violence.

Clearly, future prosecutorial policies must expand to involve a wider range of integrated actions than previously, or even currently, used by prosecutors.

VI. Conclusion

If anything can be said with certainty, no one initiative will work in every case or every jurisdiction. Strategies employed by prosecutors vary dramatically from one jurisdiction to another. Because most innovations are developed in response to public demand and specific jurisdictional needs, success of any initiative will also be evaluated locally, in terms of meeting the expectations of the communities they serve. Availability of resources will also significantly influence the initiatives prosecutors are able to develop and implement. In fact, in most large urban jurisdictions, the availability of resources is the most influential factor affecting the manner in which domestic violence cases are handled (Rebovich, 1996). One promising observation is that many prosecutors are making a dedicated effort to try new initiatives and learn from both the success and failure of others.

Despite the disinterest in prosecuting domestic violence cases in the past, prosecutors' offices are moving towards a greater role in fighting domestic violence. Although there is a lack of scientific evaluation in domestic violence prosecution, there is a substantial amount of information available for developing new programs. The majority of what is currently written on evaluating the success of innovations in domestic violence concludes that further scientifically rigorous research is in order, and desperately needed. Perhaps prosecutors would disagree. An opposing view might suggest that intensive scientific research on the effectiveness of prosecution is far less beneficial than guidance gained through experience and anecdotal success alone. Clearly the former is needed in greater quantity yet the latter perhaps influences a greater majority of offices. Regardless

whether new ideas come from external research or from within, the development and continued implementation of initiatives is warranted. Just as valid and successful research depends on solid and consistent implementation, the success of any policy initiative depends on the day-to-day commitment to its implementation (Ford & Regoli, 1993).

The initiatives described above are only a few of the many innovations now available to prosecutors. There are many more; advanced information and forensic technologies that enhance the prosecutors ability to share information and successfully prosecute cases even without the cooperation of victims and witnesses, are only two examples. Collectively, and most importantly, these initiatives suggest a willingness of prosecutors to adopt new ideas and continue to seek more effective ways of reducing domestic violence.

Domestic violence is an undeniably complex issue. Both supporters and critics agree that the criminal justice system does not possess the ability or sufficient resources to stop domestic violence on its own (American Society of Criminology, 1996; Center on Crime, Communities & Culture, 1999). However, in support of the efforts of law enforcement, research evidence suggests that criminal law is an effective resource for domestic violence victims in reducing further violence (American Society of Criminology, 1996; Ford, 1993). Prosecutors possess perhaps the greatest ability and discretion to utilize the full range of resources provided by the law in dealing with and deterring domestic violence. To do so, they must continue to develop, implement, and evaluate new initiatives even in the absence of consistent or conclusive research.

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Title: Prosecuting Domestic Violence: A Review of Current Policy, Research,
and Practice Initiatives

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Abstract

This paper describes current innovations developed or used by prosecutors as applied specifically towards domestic violence. Both the increasing demand for a more effective criminal justice system response to domestic violence and the changing role of the prosecutor have fostered the development and implementation of many innovative strategies for dealing specifically with the unique issues and problems related to domestic violence. After discussing the history of domestic violence prosecution and its influence on the changing role of the prosecutor, the paper reviews four general types of initiatives currently employed by prosecutors specific to domestic violence cases. Each is described in terms of its prevalence, advantages, limitations, and relative success. General limitations and constraints inherent to domestic violence, prosecution, and policy evaluation are also discussed. Finally, policy recommendations relative to current research and practice are presented. Given the lack of conclusive research and the variability among jurisdictions, prosecutors must often rely on their own evaluations in measuring the effectiveness of their programs. While most innovations are tested largely only through direct implementation, continued research is certainly warranted, and should be undertaken in conjunction with the most promising practices.

Attached: Bibliography